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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,302	09/11/2003	Robert W. Nelson	NELSR-P01	7815
23653 7590 10/09/2009 FRANK G MORKUNAS 7750 DAGGET ST SUITE 203 SAN DIEGO, CA 92111				
EXAMINER				
LASTRA, DANIEL				
ART UNIT		PAPER NUMBER		
3688				
MAIL DATE		DELIVERY MODE		
10/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/661,302

Applicant(s)

NELSON, ROBERT W.

Examiner

DANIEL LASTRA

Art Unit

3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12 and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 12 and 14-19 have been examined. Application 10/661,302 (ADVERTISING SYSTEM) has a filing date 09/11/2003.

Response to Amendment

2. In response to Final rejection filed 11/25/08, the Applicant filed an Amendment on 05/12/09, which amended claims 12, 16 and cancel claims 1, 3-11 and 13.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magazine Advertising Guide for Small ISVs (http://www.ericSink.com/Magazine_Advertising.html) in view of Evans (US 20020036654).

Claim 12, Magazine Advertising Guide teaches:

An advertising system comprising:

receive from a party one or more discount amount to an asking price for a subject matter of said advertisement and offering said one or more discount amount to said consumer (see page 6) but does not explicitly disclosed wherein each incrementally

larger of said discount amount offered by said party to said consumer generates an incremental increase in said advertising size and an incremental decrease in said advertising cost. However, since setting up advertising rates is a business decision by a publisher, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that publishers could decide to charge less for a large advertisement and more for a small advertisement. Since there are only three ways of determining the rates charged for two different sizes of advertisements, (1) higher for larger, (2) lower for larger, or (3) same for all sizes, and no unexpected results are obtained in choosing one rate plan over the other, it would have been obvious for Magazine Advertising Guide to choose any one of the three possible plans including charging lower rate for larger advertisements.

Magazine Advertising Guide does not expressly teach:

A consumer communication device;

A server to which a consumer may link and initiate a consumer inquiry using said consumer communication device and wherein said server is programmed to charge to a party an advertising cost for an advertising size. However, Evans teaches that it is old and well known in the promotion art for advertisers to use computers to access an online web server in order to create and select advertisements to be published in different mediums (see paragraph 60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that advertisers in the Magazine Advertising Guide would use computers to access an online

web server in order to create and select advertisements to be published in different mediums, as Evans teaches that it is old and well known to do so.

Claim 14, Magazine Advertising Guide teaches:

wherein said discount amount ranges from between none to approximately 90% of said asking price (see page 6).

Claim 15, Magazine Advertising Guide teaches:

wherein decreases to said advertising cost are between approximately none when said discount amount is none and up incrementally to 100% as said discount amount is incrementally increased (see page 6).

Claim 16, Magazine Advertising Guide teaches:

wherein increases to said advertising size over a basic size are between none when said discount amount is none and up incrementally, as overall space for an increase in said advertising size permits, (see page 6) but does not expressly teach as said discount amount is incrementally increased. However, the same argument made in claim 12 regarding this missing limitation is also made in claim 16.

Claim 17, Magazine Advertising Guide teaches:

request additional information from said consumer and dependent on answers provided by said consumer, to permit said consumer to select one or more of said one or more discount amount and storing said answers as information about said consumer and making said information available to said party (see page 6).

Claim 18, Magazine Advertising Guide teaches:

provide to said consumer a certificate reflecting said selection and based on said information (see page 6).

Claim 19, Magazine Advertising Guide teaches:

compile a report to said party wherein said report comprises a value between said advertising cost and a frequency of certificates provided on each subject matter of said advertisement (see page 6-7 "graph of the response rate to a magazine ad").

Response to Arguments

4. Applicant's arguments filed 04/02/09 have been fully considered but they are not persuasive. The Applicant argues that Magazine Advertising Guide does not teach Applicant's claimed invention. The Examiner answers that while Magazine Advertising Guide talks about pricing advertisements by physical size, e.g. whole page, half page, etc, it does not explicitly disclose that the prices for the larger advertisements are less than the prices for the smaller advertisements. However, since setting up advertising rates is a business decision by a publisher, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that publishers could decide to charge less for a large advertisement and more for a small advertisement. Since there are only three ways of determining the rates charged for two different sizes of advertisements, (1) higher for larger, (2) lower for larger, or (3) same for all sizes, and no unexpected results are obtained in choosing one rate plan over the other, it would have been obvious for Magazine Advertising Guide to choose any one of the three possible plans including charging lower rate for larger advertisements.

The Examiner is sending another Non Final rejection in order to clear the amendments and cancel claims.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A WEINHARDT can be reached on (571)272-6633. The official Fax number is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Primary Examiner, Art Unit 3688
October 7, 2009